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Supreme Court, U.S.
FILED
07-39 JUL 10 2007
OFFICE OF THE CLERK

No._____

IN THE
Supreme Court of the United States

ZIAD AKL, MD, FACP
*Petitioner,*

v.

VIRGINIA HOSPITAL CENTER, *et al.*,
*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether the state court judgment complained of, entered in bad faith and malice by the Circuit Court for the County of Arlington pursuant to a conspiracy between the court and Respondents, ordering Petitioner to pay Virginia Hospital Center-Arlington the sum of $616,114.41 pursuant to a contract and in sanctions pursuant to Va. Code § 8.01-271.1, violates the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Constitution.

2. Whether the Virginia Supreme Court erred in finding that there is no error in the judgment complained of, thereby refusing Petitioner's petition for appeal, when:
    - The Virginia Supreme Court did not review the record.
    - Said judgment by the trial court was clearly and solely motivated by animosity towards Petitioner because of his filing a complaint against a judge of the trial court with the Virginia Judicial Inquiry and Review Commission and a lawsuit against the same judge in federal court for denial of due process and deprivation of the equal protection of the laws, after said judge conspired with Respondents and their counsel to defeat Petitioner in court.
    - Said judgment was clearly inconsistent with Virginia laws and contrary to overwhelming evidence against Respondents showing that they had revoked or acted towards the revocation of Petitioner's medical staff appointment to Virginia Hospital Center through a

malicious peer-review process where documents were forged, meetings fabricated, fictitious committees convened, perjury committed, obstruction of correspondence performed and false statements were made to a Governmental agency.

3. Whether the trial court erred and violated Petitioner's right to due process in granting Respondents' motion for reconsideration and granting Petitioner's request for an order of nonsuit only with respect to the breach of contract and defamation claims.

4. Whether the trial court abused its discretion and violated Petitioner's right to due process in finding that the peer-review documents were authentic and that the fictitious Review Panel existed.

5. Whether federal courts are willing to protect individuals from state court system abuses, and whether there is a remedy within the United States judiciary branch for conspiracies effectuated by state court systems, noting that a lawsuit filed against the trial court judge and Respondents' counsel in federal court was dismissed based on the Rooker-Feldman doctrine, although Petitioner brought independent civil rights violation claims and did not seek rejection of the state court's judgment, and noting that the Fourth Circuit Court of Appeals affirmed this decision in contradiction with its own previous decisions, with previous United States Supreme Court decisions and with those of several other Circuits.

## PARTIES TO THE PROCEEDING

The following individuals and entities are parties to the proceeding in the court below:

Petitioner:
ZIAD AKL, MD, FACP

Respondents:
VIRGINIA HOSPITAL CENTER ARLINGTON HEALTH SYSTEM
YORKE ALLEN, MD
M. ANTHONY CASOLARO, MD
JAMES COLE
ROBERT HOLMAN, MD
FRANK MCGRATH, MD
ARCHIE MCPHERSON, MD
TALAL MUNASIFI, MD
LAURA PEDERSEN, RN
MARLANA PLEGER, RN
And
STEVEN ZIMMET, MD.

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Pursuant to the Rules of the Supreme Court of the United States, Petitioner Ziad Akl respectfully petitions this Honorable Court for a writ of certiorari to the Supreme Court of Virginia. The decision below attempts to impose a monetary judgment of $616,114.41 upon Petitioner depriving him of valuable property without due process of law. The decision was taken by the Circuit Court for the County of Arlington (the "**Arlington Court**") in bad faith and malice after Respondents and their counsel entered into a conspiracy with two judges of the court to defeat Petitioner in this matter. The proceedings below were undertaken in bad faith and malice and violated the Equal Protection and Due Process clauses of the Fourteenth Amendment. Petitioner's only remedy is to appeal to this Honorable Court as he is subject to a conspiracy by a state court system and has no remedy in lower federal courts to vindicate the violation of his civil rights, as the lower federal courts have declined to assume jurisdiction over civil rights violation claims brought by Petitioner, although Petitioner did not seek rejection of any state court judgment. A writ of certiorari is necessary as Petitioner is being deprived of valuable property rights without due process of law in violation of the Fourteenth Amendment.

## I. INTRODUCTION

This matter arises out of scandalous events that took place in the years 2003-2004 at Virginia Hospital Center-Arlington (the "**Hospital**"), located in Arlington, Virginia. The Hospital administration and medical staff, lured by an unscrupulous attorney who was so confident that Petitioner would not bring legal action, revoked Petitioner's medical staff appointment through a forged and fraudulent peer-review, committing several felonies and misdemeanors under Virginia and Federal laws. After Petitioner filed suit in the Arlington County Circuit Court, the Hospital attorney was fired, and the Hospital entered into a conspiracy with not one, but two judges of the Arlington Court to defeat Petitioner. Despite the

conspirators' efforts, Petitioner was able to prove that the peer-review process was the product of fraud and forgery. However, as it was clear to petitioner that there was an agreement between the Arlington Court and the Hospital that the case would be dismissed on summary judgment, Petitioner nonsuited his case with the intent to re-file it in federal court and filed a complaint with the Virginia Judicial Inquiry and Review Commission against the state court judge, Alfred Swersky, followed by a lawsuit against him, his law clerk and the Hospital's counsel in federal court. The result was a retaliatory act by a second judge who entered "sanctions" against Petitioner in the amount of $616.114.14. The Virginia Supreme Court refused Petitioner's petition for appeal, falsely claiming to have reviewed the record below and not finding any reversible error among 23 assignments of error by Petitioner. This judicial misconduct has severely undermined the reputation of the Virginia Judicial System and has now led Petitioner to resort to the United States House of Representatives and the Department of Justice. This petition urges reversal of the judgment below.

## II. OPINIONS AND ORDERS BELOW

- Order dated October 2, 2006, entered by the Arlington County Circuit Court, ordering Petitioner to pay the Hospital $616,114.41 (Appendix at 1).
- Judgment Order dated May 18, 2007, entered by the Arlington County Circuit Court, ordering Petitioner to pay the Hospital $616,114.41 (Appendix at 4).
- Letter opinion dated February 10, 2006, declaring the peer-review documents authentic and declaring that the fictitious Review Panel existed (Appendix at 7).
- Order dated October 2, 2006, granting Petitioner's request for an order of nonsuit only with respect to the breach of contract and defamation claims. (Appendix at 10).
- Opinion dated April 11, 2007, entered by the Supreme Court of Virginia, refusing Petitioner's petition for

appeal, finding no reversible error in the judgment below (Appendix at 12).

## III. JURISDICTION

Petitioner seeks review of the Supreme Court of Virginia's decision entered on April 11, 2007, which, as demonstrated below, violates the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Constitution as protected by 42 U.S.C. § 1983.

This Court has jurisdiction to review by writ of certiorari any "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had . . . where any title, right, privilege, or immunity is specially set up or claimed under the Constitution . . . or statutes of . . . the United States." 28 U.S.C. § 1257(a). Accordingly, the questions presented in this petition, mainly whether the judgment below violates the Due Process and Equal Protection clauses of the Fourteenth Amendment, plainly fall within the jurisdiction of this Court under 28 U.S.C. § 1257(a).

The judgment below is plainly final for purposes of this Court's certiorari jurisdiction. The proceedings in the trial court have been concluded with the entry of the nonsuit order and Petitioner's petition for appeal to the Supreme Court of Virginia was refused by order dated April 11, 2007; thus, this petition is timely pursuant to Rule 13(1) of the Rules of this Court.

## IV. CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

- The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.
- 42 U.S.C. § 1983 provides, in relevant part, that "Every person who, under color of any statute, ordinance,

regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

• Va. Code § 8.01-271.1 provides, in pertinent part, that "The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, written motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. An oral motion made by an attorney or party in any court of the Commonwealth constitutes a representation by him that (i) to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (ii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed or made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed the paper or made the motion, a represented party, or both, an appropriate

sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper or making of the motion, including a reasonable attorney's fee."

- Va. Code § 8.01-380 provides, in relevant part that "Only one nonsuit may be taken to a cause of action or against the same party to the proceeding, as a matter of right, although the court may allow additional nonsuits or counsel may stipulate to additional nonsuits."
- Va. Code § 8.01-172 provides that "If any person forge any writing, other than such as is mentioned in §§ 18.2-168 and 18.2-170, to the prejudice of another's right, or utter, or attempt to employ as true, such forged writing, knowing it to be forged, he shall be guilty of a Class 5 felony. Any person who shall obtain, by any false pretense or token, the signature of another person, to any such writing, with intent to defraud any other person, shall be deemed guilty of the forgery thereof, and shall be subject to like punishment."

## V. STATEMENT OF THE FACTS

Petitioner is a Board-certified physician specializing in Internal Medicine and Infectious Diseases, licensed to practice Medicine in Virginia, the District of Columbia and Maryland. Petitioner's medical staff appointment to Virginia Hospital Center-Arlington (the "**Hospital**") was revoked in July 2004 after a malicious, forged and fraudulent peer-review was undertaken of him after two nurses (the "**Nurses**") combined together and brought false complaints of harassment against him after they failed to get his attention. The Nurses had a background of serious mental instability, namely, Borderline Personality Disorder, which is a serious mental disorder that affects 3% of women in the United States. After their complaints, the Nurses engaged in a continued attention-seeking behavior towards Petitioner, who was under strict orders not to make any contact with them outside of patient care. The Nurses' behavior was

harassing to Petitioner and jeopardized the quality of care he rendered. Petitioner repeatedly reported the Nurses' actions to the Citizenship Committee of the Hospital; however, the Citizenship Committee and the Hospital failed to take any remedial action against the Nurses while claiming to Petitioner, including in writing, that they did. The Hospital was in fact attempting to protect the Nurses because one of them, Laura Pedersen, the main inciter in this matter, was having an extra-marital affair with M. Anthony Casolaro, MD, Chairman of the Department of Medicine, a member of the Citizenship Committee and a direct supervisor of Petitioner's. As the harassing behavior of the Nurses towards Petitioner continued, Petitioner informed the Citizenship Committee of his knowledge of the conflict of interest that existed in the fact that Dr. Casolaro was involved with nurse Pedersen, was revealing confidential information to her and was directly executing her wishes. Petitioner also requested a hearing on the charges against him and expressed his intention to file a lawsuit. In an act of extortion and in a desperate attempt to intimidate Petitioner and make him back off, James Cole, President of the Hospital, summarily suspended Petitioner's clinical privileges under the excuse of "disruptive behavior." The Medical Executive Committee ("**MEC**") then proceeded to meet in the presence of "select" members and decided in secret to revoke Petitioner's medical staff appointment *no matter what*, without going through the proper procedures required by the Medical Credentials Policy. For that purpose, an Investigative Committee was created that only met with Petitioner, forged minutes of other meetings with other witnesses and forged a report that it allegedly submitted to the MEC recommending revocation of Petitioner's medical staff appointment. The MEC failed to hear Petitioner although it had infcrmed him that it would, and allegedly proceeded to vote for revocation of his appointment. A subsequent hearing requested by Petitioner was closer to a Soviet-style trial, where Petitioner was denied the right to discovery, to call

witnesses, to be represented by counsel (who was present but could not speak) or to be heard. Not surprisingly, the Hearing Panel upheld the recommendations of the MEC. Petitioner appealed the decision to a three-member Review Panel supposedly appointed by the Chairman of the Board of Directors of the Hospital. The Review Panel, which was fictitious, "upheld" the previous decisions to revoke Petitioner's appointment. The Board of Directors then, through a vote that never occurred, revoked Petitioner's appointment and the Hospital filed defamatory reports about Petitioner with the Virginia Board of Medicine and the National Practitioner Data Bank. The various Hospital officials were acting under the impression that they enjoyed absolute immunity and under the false belief, spurred by the Hospital attorney's assertions, that Petitioner would never be able to bring legal action.

On November 17, 2004, Petitioner filed, through counsel, a lawsuit in the Arlington County Circuit Court against the Hospital and seven individuals followed by a lawsuit *pro se* against the Nurses in the Fairfax County Circuit Court and another lawsuit *pro se* against his previous employer for conspiring with the Hospital. The lawsuits were consolidated by the Arlington Court after the second lawsuit was transferred there by order of the Fairfax County Circuit Court upon motion by the defendants.

During the proceedings, Petitioner uncovered a large number of facts that pointed towards a concerted effort by numerous individuals to maliciously terminate his medical staff appointment at the Hospital, defame him and terminate his career as a physician. Petitioner also uncovered a conspiracy by way of which Judge Alfred Swersky, his law clerk and counsel for Respondents aimed at defeating Petitioner and allowing Respondents to prevail. Judge Alfred Swersky, a retired judge acting as a substitute judge, presided over most hearings and appointed himself presiding judge over Petitioner's trial. Over the next two years after the filing of Petitioner's first

lawsuit, it became clear that Judge Swersky was unable and unwilling to stand at equal distance from the parties, was consistently ruling in favor of Respondents contrary to evidence and law, was continuously obstructing discovery, was continuously communicating *ex parte* with Respondents and their counsel and promised them to dismiss the case on summary judgment. After conferring with the Virginia Judicial Inquiry and Review Commission, Petitioner filed, on July 17, 2006, a motion to recuse Judge Swersky on the basis of a conspiracy between him and Respondents, and moved to nonsuit his pending claims pursuant to Va. Code 8.01-380. In response, Respondents moved the court for an award of costs incurred in defending these matters pursuant to a contract between Petitioner and the Hospital. Alternatively, Respondents moved the court to award the Hospital the fees incurred as a sanction against Petitioner pursuant to Va. Code 8.01-271.1, purporting that the lawsuits themselves were filed by Petitioner "to harass and needlessly cause Defendants to expend significant sums defending the baseless allegations."

After Judge Swersky expressed his intention to deny Petitioner's motion to recuse and to enter sanctions against Petitioner, Petitioner filed, on August 21, 2006, a lawsuit against him, his law clerk, and Respondents' counsel in the United States District Court for the Eastern District of Virginia, Alexandria Division (the "**Alexandria Court**"), for civil rights violation and conspiracy to effectuate the same. Judge Swersky then allegedly recused himself without ever issuing any order to that effect. At a hearing held on October 2, 2006, Judge Benjamin Kendrick denied Petitioner's motion to transfer venue, which alleged bias by the court, and awarded the Hospital $616,114.41 in costs incurred in the defense of the actions relating to Petitioner's clinical privileges. The hearing was reminiscent of a totalitarian regime trial. The monetary judgment was allegedly based on a contract between Petitioner and the Hospital in which Petitioner agreed to reimburse the Hospital for the costs incurred in

defending lawsuits arising from the termination of his medical privileges *if he did not prevail.* However, the merits of the case were never reached, a breach of contract claim was pending before the court, and the case was nonsuited prior to the end of discovery. This judgment was entered in violation of previous Virginia Supreme Court decisions that a party who commits the first breach of a contract is not entitled to enforce the contract. Horton v. Horton, 254 Va. 111, 115, 487 S.E.2d 200, 203 (1997) (citing Federal Ins. Co. v. Starr Elec. Co., 242 Va. 459, 468, 410 S.E.2d 684, 689 (1991); Hurley v. Bennett, 163 Va. 241, 253, 176 S.E. 171, 175 (1934)). Judge Kendrick also cited Va. Code 8.01-271.1 as a basis for the award, without specifying what conduct by Petitioner led to such sanctions.

Petitioner appealed this matter to the Supreme Court of Virginia, assigning twenty-three errors among which was the order awarding the Hospital the monetary damages and the other questions before this Court. On April 11, 2007, the Supreme Court of Virginia refused Petitioner's petition for appeal, claiming to have reviewed the record below. Evidence, however, unmistakably shows that the Supreme Court of Virginia did not review the record and was merely protecting the trial court judges.

The evidence in support of Petitioner's contention of a conspiracy between the Arlington Court and Respondents and their counsel is overwhelming. It shows beyond reasonable doubt that Respondents were in constant *ex parte* communication with Judge Swersky and later with Judge Kendrick and had a collective agreement to defeat Petitioner. It also shows that the two judges violated canons 1, 2 and 3 of the Virginia Canons of Judicial Conduct. The record below demonstrates that in the heart of the United States, some judges act as if ours is a totalitarian regime, ruling through power, abusing their authority, and ignoring all basic tenets of judicial

conduct.[1] Judge Swersky appointed himself presiding judge over the case to rule in favor of Respondents, repeatedly obstructed discovery by Petitioner in bad faith and malice, repeatedly ruled against Petitioner contrary to law and evidence, uttered forgery committing a class 5 felony, repeatedly communicated with Respondents *ex parte*, had an agreement with them to dispose of the case on summary judgment, and entered into a conspiracy with Judge Kendrick to retaliate against Petitioner by entering sanctions against him for $616,114.41. Reiterating all the malicious actions undertaken by the Arlington Court would require that this brief exceed the thirty-page limit allowed. Therefore, Petitioner will narrate only some of the events that occurred during the proceedings below that point towards a conspiracy between the Arlington Court and Respondents and towards Petitioner's claims that he was denied due process.

- On October 2, 2006, Judge Kendrick entered a monetary judgment against Petitioner based on a contract that not only was clearly breached, but also did not substantively support any award. The contract provided that Petitioner would pay the Hospital its costs in defending any action brought by Petitioner *if he did not prevail.* The court considered that Petitioner did not prevail when he nonsuited his claims, although the case never reached the merits, contrary to clear precedent by the Supreme Court of Virginia. Generally, a party who commits the first breach of a contract is not entitled to enforce the contract. Horton v. Horton, 254 Va. 111, 115, 487 S.E.2d 200, 203 (1997). If the first breaching party committed a material breach, that party cannot enforce the contract. Horton, 254 Va. at 115, 487 S.E.2d at 204. A material breach is a failure to do something that is so fundamental to the contract that the failure to perform

[1] In addition, the two judges' demeanor was blatantly rude and dismissive of Petitioner when he was alone without his counsel.

that obligation defeats an essential purpose of the contract. Horton, 254 Va. at 115-116. If the initial breach is material, the other party to the contract is excused from performing his contractual obligations. Horton, 254 Va. at 116, 487 S.E.2d at 204. Not only the case never reached the merits to determine whether the contract was breached, but there was evidence, submitted by Petitioner to the court, proving *beyond reasonable doubt*, that the contract was breached in egregious ways, in violation of several sections of the criminal code of Virginia. The effect of a first voluntary nonsuit pursuant to Va. Code § 8.01-380 is to put an end to a case without prejudice and *without a decision on the merits*. Daniels v. Warden of the Red Onion State Prison, 266 Va. 399; 588 S.E.2d 382 (2003). Since the court had not determined the case on its merits, it should have, at the stage of nonsuit, admitted as true Petitioner's allegations, i.e. it should have assumed that the defendants that were covered by the contract did materially breach it and concluded that they were not entitled to enforce its provisions until a determination on the merits had been made. Holding otherwise meant that the court had determined that Respondents did not breach the contract – determination that the court could not make at the stage of nonsuit.

The court also cited Va. Code 8.01-271.1 as a basis for the award, not identifying what Petitioner did to deserve to be sanctioned. This was clear retaliation against Petitioner for raising his claims of conspiracy before the Arlington and Alexandria Courts. The transcript of the proceedings (not to mention the court's demeanor) clearly demonstrates the above; the court allowed, in a clearly agreed upon scenario, Respondents to introduce witnesses without prior notice and 150 pages of evidence as the first witness took the stand. *Neither Petitioner nor the court had the time to look at the evidence, and Petitioner's motion for continuance to examine such evidence was denied.* The court then, reading from a prepared statement, entered the monetary judgment without looking at the submitted evidence. If it is normal practice

at the Arlington Court to allow witnesses to take the stand without prior notice to the opposing party, at least a *pro se* plaintiff should be given such notice to prepare his questions and perhaps bring his own witnesses. Finally, Judge Kendrick, who claimed to have conducted an "exhausted review" of the record, clearly did not review the record previously submitted by Respondents under seal for Judge Swersky's *in camera* review (see below), although he claimed that he did during the hearing and in the orders he issued.

- In February 2006, Respondents sent Judge Swersky two pieces of mail allegedly containing evidence of the existence of the Review Panel, and copied Petitioner on the cover letters. Based on his alleged review of the documents submitted under seal, Judge Swersky ruled that the peer-review documents were authentic and that the Review Panel existed. In late October 2006, after the conclusion of all proceedings, Petitioner reviewed the record kept by the court. The first envelope in question was voluminous and had a notation on it that it was opened and resealed by Judge Swersky. The envelope allegedly contained, among other documents, a binder that was allegedly submitted to the Review Panel (Petitioner was provided a copy of the binder at the time of his appeal to the Review Panel). The binder contained hundreds of pages, yet Judge Swersky claims to have reviewed it in one day. But that is not all: the second envelope was still intact; i.e. unopened by anyone, as witnessed by the clerk of the Arlington Court.

In his appeal brief to the Supreme Court of Virginia, Petitioner contended that the trial court erred in ruling that the peer-review documents were authentic and that the Review Panel existed. Petitioner also informed the Virginia Supreme Court that the second envelope was never opened by Judge Swersky. The Supreme Court denied Petitioner's petition for appeal claiming to have reviewed the record below and to have found no reversible error. On May 8, 2007, Petitioner examined the record again after it was returned from the Virginia Supreme

Court to the Arlington Court. The first envelope was clearly never opened by anyone after Judge Swersky had allegedly opened and resealed it, and the second envelope was *still* intact and never opened by anyone. See Appendix at 13, affidavit by Nabil Emad, DDS, to that effect. Had anyone at the Virginia Supreme Court opened the first envelope, the handwriting and the lines on it would have shifted, as those overlapped on the body and the flip-top of the envelope.

This evidence submitted by Respondents under seal was behind Judge Swersky's affirmance that the Review Panel existed and that there were no fictitious meetings. *The evidence shows, however, that the documents were only partially, and hastily, reviewed by Judge Swersky, never reviewed by Judge Kendrick, and never reviewed by the Supreme Court of Virginia, despite its claim that it reviewed the record, and despite that Petitioner assigned an error to Judge Swersky's findings that the peer-review documents were authentic and that the Review Panel existed.* In fact, a careful review of the record will demonstrate to this Court that the Virginia Supreme Court is merely protecting the judges below as the record is replete with not errors, but numerous instances of open and blatant misconduct, and no court or any reasonable person could possibly find that no reversible error was made.

- Judge Swersky dismissed several of Petitioner's claims on demurrer contrary to law and intentionally denied Petitioner the opportunity to amend those to cure the alleged defects. Additionally, he persistently obstructed discovery, initially of allegedly privileged information but then of non-privileged information and ruled that certain meetings occurred and certain committees existed despite overwhelming evidence to the contrary, failing to review the record that allegedly supports his rulings.

For instance, Dr. John Garrett, Chairman of the Board of Directors of the Hospital, allegedly appointed a three-member Review Panel to review Petitioner's appeal. It is

Petitioner's contention that said panel was fictitious and that the report issued on its behalf was forged. The evidence submitted by Petitioner to the court unmistakably demonstrated fabrication of meetings, forgery of documents, fraud and deceit throughout the peer-review process. It also strongly suggested that the Review Panel was fictitious and its report forged. After Petitioner sought to depose Dr. Garrett with regard to the Review Panel and other issues, Respondents moved to protect him. After briefing and oral argument,[2] Judge Swersky requested that the Hospital submit some of the peer-review records under seal for his *in camera* review and issued a letter opinion dated February 10, 2006, declaring the peer-review documents authentic, refuting Petitioner's claims of fictitious committees, asserting that "many meetings, hearings and conferences were held, attended by Plaintiff and, in many instances, his attorney," and protecting the names of the Review Panel members, indirectly ruling that the panel indeed existed. Interestingly, the letter opinion did not address the motion to compel the deposition of Dr. Garrett and failed to rule on it; rather, the court asked Respondents' counsel to draft an "appropriate order." Naturally, the order drafted by counsel "ruled" that Petitioner could not depose Dr. Garrett. Petitioner then wrote Judge Swersky asking him for a decision on his motion, but the court failed to answer. Petitioner then had to file a motion for the court to hear his objections to the order drafted by Petitioners' counsel. After briefing and oral argument, Judge Swersky ruled that Petitioner could depose Dr. Garrett only with regard to whether he had a personal conflict of interest with Petitioner; Petitioner was explicitly prohibited by the court from asking Dr. Garrett any other question,

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[2] During which Respondents' counsel made the following statement: "I think if we got Dr. Garrett in here and put him under oath, I'm confident he couldn't remember the names of the people he appointed for a review panel." This provides further proof that the panel was fictitious.

including whether he did in fact appoint a Review Panel or not, and no reason for such order was advanced. This, in itself, is sufficient proof that the Review Panel was fictitious and that the court was aware of that. Further, at a later hearing held on June 30, 2006, Petitioner made an oral motion to depose the alleged members of the Review Panel (whose names were never provided). Naturally, the motion was denied by Judge Swersky.

- On July 21, 2006, Petitioner moved to nonsuit his pending claims pursuant to Va. Code 8.01-380. Respondents opposed the nonsuit with respect to the claims of tortious interference with economic relationships, civil conspiracy and denial of due process in the first lawsuit he had filed, claiming that those were dismissed with prejudice and thus could not be nonsuited. The court and the parties could not find a written order dismissing those claims. Judge Swersky, at a hearing held on August 11, 2006, ruled that in the absence of an order specifically stating that the claims were dismissed with prejudice, he did not so do. Accordingly, he granted the nonsuit with regard to all claims in that first lawsuit. Subsequently, an order dismissing the claims was found. The order did not state that the claims were dismissed with prejudice. Respondents then moved the court to reconsider its decision. The court, Judge Kendrick, ruled on September 1, 2006 that only two claims could be nonsuited – the breach of contract and the defamation claims. It is not clear how Judge Kendrick reinterpreted Judge Swersky's own ruling to mean that the disputed claims were in fact dismissed with prejudice. However, by then, Judge Swersky had been served by Petitioner with his Complaint against him filed in the Alexandria Court and had allegedly recused himself. Judge Kendrick could not contend to be able to interpret Judge Swersky's ruling better than Judge Swersky himself. In fact, prior to appearing before Judge Swersky for the latter to interpret his ruling, the parties had appeared before Judge William Newman, and the latter directed the parties to appear before Judge Swersky, because "he knows what he

intended." Judge Kendrick was merely retaliating against Petitioner, as evidenced by his demeanor.

- At the hearing held on August 11, 2006 on Petitioner's request for an order of nonsuit, Judge Swersky set a date for a hearing on Respondents' request for award of costs for October 2, 2006, stating that the hearing was to come up in the "regular rotation among the Arlington circuit judges." This statement was deceptive, as Judge Swersky had already agreed with Judge Kendrick that the latter would hear the motion and that he would retaliate against Petitioner.

First, there was no reason for Judge Swersky to set a date for a hearing he would not preside over. Second, there was no reason to set a date almost two months down the road. Third, October 2 was a Monday, (and Judge Swersky was aware of that fact since that was supposed to be the first day of the previously scheduled trial), and there is no "regular rotation among the Arlington circuit judges" on Mondays. Fourth, Judge Kendrick himself later stated, at the hearing held on September 1, that he would be hearing the motion, with a threatening tone and demeanor. The date was set by Judge Swersky for October 2 because he had agreed with Judge Kendrick that the latter would hear the motion, but Judge Kendrick was scheduled to be away in September as confirmed later by the Arlington Court's Chambers, and was not available before October 2. Setting the motion for hearing on a Monday would prevent it from being heard on a Friday, when it could be randomly placed by the Chambers on a different judge's docket as is the normal operation of the court, and would also ensure that the hearing is held "privately" since no other hearings would be scheduled that day, ensuring that Judge Kendrick could act arbitrarily. Even Respondents' counsel were aware of Judge Kendrick's schedule and that he would be unavailable after September 1, as evidenced by their insistence upon sending him an order to sign *on the same day* he ruled on their motion for reconsideration on Friday, September 1. Counsel even sent Petitioner an e-

mail later that day asking him to sign an order they drafted and suggesting sending a messenger to his office to get his signature. Respondents' counsel never before were in such hurry to send the judge an order, and usually waited a couple of weeks before doing so. Respondents, their counsel, and Judges Swersky and Kendrick were in constant *ex parte* communication.

In this matter, Petitioner raised, in the trial court, Constitutional questions against Respondents and the trial court, alleging bad faith and malice and denial of due process of law in violation of the Fourteenth Amendment to the Constitution, by way of a conspiracy between the court and Respondents. The court retaliated by entering a monetary judgment against Petitioner, depriving him of his property rights, also without due process of law. These questions were raised by Petitioner through the filing of a motion to recuse Judge Swersky setting up Petitioner's allegations (the motion was not heard; however, Judge Swersky openly expressed his intention to deny it during a hearing on Petitoner's request for an order of nonsuit, and allegedly recused himself only after Petitioner sued him in federal court); through the filing of a motion to transfer venue based on bias by the Arlington Court (the motion was denied); in Petitioner's opposition to Respondents' motion for award of costs and for sanctions; during the hearing on Respondents' motion for award of costs and for sanctions (Petitioner stated: "Just in case the record was not clear, I would like to note on the record that these affidavits regarding the expenses were just handed to me at the beginning of this session. I have not had the chance to review them. I was not informed that this was going to be an evidentiary hearing. I did not know about these witnesses. I did not know that they were going to testify, and I did not have a chance to depose them"); through the filing of a complaint against Judge Swersky with the Virginia Judicial Inquiry and Review Commission (and informing Judge Swersky of said complaint in the motion to recuse); through the filing

of a complaint against Judge Kendrick with the Virginia Judicial Inquiry and Review Commission; and through Petitioner's petition for appeal to the Supreme Court of Virginia, where Petitioner assigned an error to each of the decisions complained of here, and *informed the court that the decisions were made pursuant to a conspiracy between the court and Respondents in violation of due process.* In his petition for appeal to the Supreme Court of Virginia, Petitioner stated: "Plaintiff ... uncovered a conspiracy by way of which Judge Swersky, his law clerk and counsel for the Defendants aimed at defeating Plaintiff and allowing the Defendants to prevail. After Judge Swersky recused himself, Judge Kendrick exacted revenge against Plaintiff by entering a judgment for $616,114.41 against him." Petitioner also assigned the following errors verbatim:

- The trial court erred in requiring Plaintiff to pay Virginia Hospital Center $616,114.41 in costs incurred in the defense of actions relating to Plaintiff's clinical privileges.
- The trial court abused its discretion in holding that Plaintiff should be sanctioned pursuant to Va. Code 8.01-271.1.
- The trial court abused its discretion in finding that the peer-review documents were authentic and that the Review Panel existed.
- The trial court erred in granting Defendants' motion for reconsideration and granting Plaintiff's request for an order of nonsuit only with respect to the breach of contract and defamation claims.

Petitioner also raised these Constitutional questions before the Alexandria Court in his lawsuit against Judge Swersky, his law clerk and Respondents' counsel. The Alexandria Court refused to assume jurisdiction over the case under the Rooker-Feldman doctrine although Petitioner did not request that the District Court reject any state court judgment, but only

raised independent civil rights violation claims of denial of due process and deprivation of the equal protection of the laws under 42 U.S.C. 1983 and 1985. The Alexandria Court ignored clear precedent by this Court and several Circuits supporting Petitioner's approach. *See* Dennis v. Sparks, 449 U.S. 24 (1980); Kimes v. Stone, 84 F.3d 1121 (9th Cir., 1996); Nesses v. Shepard, 68 F.3d 1003 (7th Cir., 1995); Shallow v. Rogers, 201 Fed. Appx. 901 (3rd Cir., 2006). *See* also Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005) (stating that the Rooker-Feldman doctrine operates only in a narrow set of circumstances, namely: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments). The District Court, in dismissing the case, held that "no matter how you want to phrase it, you're asking this court to enter a judgment that essentially would vacate or undermine the state court proceedings." The Fourth Circuit Court of Appeals affirmed for the reasons stated by the Alexandria Court, contradicting its own previous decisions adopting the Supreme Court ruling in Exxon. See Washington v. Wilmore, 407 F.3d 274, 280 (4th Cir. 2005) (holding, post-Exxon, that the Rooker-Feldman doctrine did not apply because "[the plaintiff's] claim of injury rests not on the state court judgment itself, but rather on the alleged violation of his constitutional rights [by the defendant]"); see also Davani v. Va. DOT, 434 F.3d 712, 718-719 (4th Cir. 2006).

## VI. REASONS WHY THIS PETITION SHOULD BE GRANTED

### 1. There Is A Reasonable Probability That At Least Four Members Of This Court Would Conclude That This Case Warrants Plenary Consideration

There is a reasonable probability that four or more members of this Court would vote to grant certiorari. This Court previously granted similar petitions and reviewed

cases involving judicial corruption or misconduct, and deems this issue one of major public importance. See Dennis, *supra*, and Pulliam v. Allen, 466 U.S. 522.

In Dennis, this Court recognized the importance of providing remedy to individuals such as Petitioner who suffer injuries resulting from subversion of the judicial process. Indeed, in Dennis, this Court stated:

> We agree with the Court of Appeals that the potential harm to the public from denying immunity to private co-conspirators is outweighed by the benefits of providing a remedy against those private persons who participate in subverting the judicial process and in so doing inflict injury on other persons.

Few issues could be more important than those presented in this case. At stake is the lawful resolution of a conspiracy between a state court and defendants to a civil litigation and their counsel, where the Supreme Court of the state, which only grants petitions for appeal in a discretionary manner, refused to redress grievance, claiming to have reviewed the record and finding no reversible error, when it clearly did not review the record, and was obviously attempting to protect the lower court judges.

**2. Petitioner Has No Remedy At Law Against The State Court Conspiracy But In This Court**

Petitioner has no remedy at law for such conspiracy but in this Court, because the Supreme Court of Virginia has refused Petitioner's petition for appeal and the United States District Court cannot reverse state court rulings under the Rooker-Feldman doctrine.

Although the Supreme Court of Virginia claims to have reviewed the record and to have found no reversible error, it is Petitioner's contention that the Supreme Court of Virginia did not review the record and is merely attempting to protect the two judges, just as the Virginia Judicial Inquiry and Review Commission (the "JIRC") did. The latter is under the supervisory power of the Virginia

Supreme Court. The JIRC initially used dilatory tactics with Petitioner, then avoided providing him with answers and gave his attorney the runaround, then finally sent Petitioner a letter informing him that he did not allege anything that would constitute the basis for actions by the Commission. Interestingly, the letter was sent on the same day the Commission had informed Petitioner that it was still attempting to determine if it had jurisdiction over his complaint.

Even the collateral remedy of vindicating civil rights violations that *is* available under § 1983 was denied Petitioner by the United States District Court of Alexandria, which stated:

> "[N]o matter how you want to phrase it, you're asking this court to enter a judgment that essentially would vacate or undermine the state court proceedings."

The lawsuit that Petitioner filed in the Alexandria Court against Judge Swersky, his law clerk, and Respondents' counsel seeking declaratory relief against the judge, and monetary damages against the other defendants, asserted section 1983 claims of Denial of Due Process and Deprivation of the Equal Protection of the Laws as protected by the Fourteenth Amendment, in addition to state tort claims. The case was dismissed based, *inter alia*, on the Rooker-Feldman doctrine, although Petitioner did not seek reversal or annulment of any state court decision and despite clear precedent set by the United States Supreme Court and several Circuits supporting Petitioner's approach. Indeed, in Dennis and Kimes, *supra*, civil rights violation claims against judges and attorneys were not barred by Rooker-Fedman, and in Nesses, *supra*, the court explained that lawsuits against judges are not barred by Rooker-Feldman as long as the plaintiff does not seek reversal of a state court judgment. After the defendants in the federal case and their counsel argued that federal courts cannot review claims such as Petitioner's under the Rooker-Feldman doctrine, and after the court dismissed the case, Petitioner re-filed the same

claims in the Circuit Court for the County of Montgomery in Maryland against one of the attorneys. Interestingly, affirming that Petitioner's claims are the same claims as the ones previously brought in the Alexandria Court, the defendant removed the case to the United States District Court for the District of Maryland, asserting that that federal court has jurisdiction over Petitioner's claims, placing the federal courts at risk of inconsistent decisions. Further, the defendant attorney moved to dismiss the case on a Rule 12(b)(6) motion and in the alternative to *transfer the case to the United Sates District Court in Alexandria*, where she had successfully argued that the court lacked subject-matter jurisdiction.

The Fourth Circuit Court of Appeals affirmed the dismissal by the Alexandria Court for the reasons stated by the District Court. This was despite the fact that Petitioner did not ask the federal court to reverse any judgment, and despite the fact that Petitioner filed independent claims of civil rights violation, similarly to the approach taken by the plaintiffs in Dennis, Kimes, Nesses and Shallow, *supra*. Petitioner was merely pointing to the state court proceedings as evidence of the harm that the state court conspiracy caused him, as the plaintiff in Nesses, *supra*, did.

Because Petitioner has no remedy at law against conspiracies effectuated by state courts, and because lower federal courts cannot reverse state court decisions, and because lower federal courts have refused to adjudicate civil rights claims, Petitioner's only remedy is to appeal to this Court.

**3. The Fact That This Is A State Judicial Conspiracy Requires The Exercise Of This Court's Supervisory Power**

The Virginia Supreme Court and the trial court both departed from the accepted and usual course of judicial proceedings, and the Virginia Supreme Court sanctioned the departure of the lower court. This calls for an exercise of this Court's supervisory power over the

state's violation of Petitioner's civil rights. No other court but this one has the ability to reverse the state court's judgment, protect Petitioner's civil rights, and redress grievance.

**4. This Case Epitomizes Another Issue Recognized By This Court As Being Of Public Importance: Bad-Faith Peer-Review Of Physicians**

In 1986, Congress enacted the Health Care Quality Improvement Act, 42 USC § 11101 *et seq.* ("**HCQIA**"), to provide protection from liability to healthcare institutions and physicians involved in peer-review, as long as certain conditions are met during the peer-review process. The law also established the National Practitioner Data Bank, a repository of actions taken against physicians, to which healthcare institutions must report those actions. The purpose was to prevent incompetent physicians from moving between states without being detected. An entry against a physician in the Data Bank can be equivalent to a death sentence, since it makes it very difficult for a physician to obtain privileges at any other hospital, because the latter verify petitioners' credentials with the Data Bank prior to granting or renewing privileges. This practically forecloses the career of those physicians whose practice, as is the case for Petitioner, is mostly hospital-based. *See* Cooper v. Delaware Valley Medical Center., 539 Pa. 620, 628-29, 654 A.2d 547, 551 (1995) (noting that finding gainful employment in the hospital setting after a poor review is unlikely as a result of the provisions of the Health Care Quality Improvement Act). *See* also Hayes v. Mercy Health Corporation, 1999 Pa. LEXIS 2976; 559 Pa. 21; 739 A.2d 114 (1999).

Since HCQIA went into effect in 1989, thousands of adverse reports have been filed with the Data Bank. Unfortunately, a large number of the actions reported have been taken maliciously by hospitals and their Medical Staff against the physicians subjects of the peer-review. The motives are usually anti-competitive in nature but also include retaliation against

whistleblowers, personal spite, and even disputes over a parking space. This process has been dubbed sham peer-review or bad-faith peer-review, has now become a powerful weapon in the hands of hospitals and those physicians who hold the political power in hospitals, and is being misused nationwide. Many lawsuits against the perpetrators have been filed by the victims, but very few survived summary judgment because of the immunity provided by HCQIA and because the conditions that need to be fulfilled for a peer-review to be considered adequate, as defined by HCQIA, are inherently unfair, vague and subject to interpretation by the Courts.

Reviewers set up a double standard of covering up the real mistakes of their friends and exposing their politically vulnerable colleagues for non-substantial, flimsy, clinically insignificant, bogus and fabricated reasons. The main result of HCQIA has been to marginalize some of the most competent and most quality-concerned physicians, driving them out of practice or terminating their lives through suicide. At the same time, the medically incompetent, the advocates of continued poor-quality and the most financially driven are allowed to run this Nation's hospitals; all because the provisions of the Health Care Quality Improvement Act and similar state laws allow them to do so. And then we ask: why are 100,000 people dying every year from medical errors? It's because behind the smoke screen of every one physician targeted by sham peer-review, there is a dozen physicians whose medical errors are quietly shoved under the rug, and there are many more potential whistleblowers who are automatically silenced. Therein lies the real source of threat to public health, as well as the injustice to those individual physicians who become sacrificial lambs.

Effective medical peer-review is (or rather can be) the ultimate protector of public health. However, in its current secretive form, it invites abuse. There is much reason to believe, as elucidated above, that peer-review is practiced more in its corrupt form rather than for its

original established purpose. The situation with medicine today is reminiscent of the days when scientists of cigarette companies did their own research and declared that cigarettes did not cause cancer. In short, bad-faith peer-review does lead to patient harm and death.

Two Justices on the Nevada Supreme Court noted that HCQIA can sometimes be used, "not to improve the quality of medical care, but to leave a doctor who was unfairly treated without any viable remedy." Those Justices also stated: "basically, as long as the hospitals provide procedural due process and state some minimal basis related to quality health care, whether legitimate or not, they are immune from liability. Unfortunately, this may leave the hospitals free to abuse the process for their own purposes." Meyer v. Sunrise Hosp., 22 P.3d 1142 (Nev. 2001).

The recent award of $366 million to a physician by a federal jury in Texas for a single bad-faith peer-review highlights that this practice is adding tremendous cost to healthcare (although the award was decreased to $22 million on *remittitur*). *See* Poliner v. Texas Health Systems et al., 2006 WL 770425, U.S. Dist LEXIS 13125 (N.D.Tex. Mar. 27, 2006). Dr. Poliner was suspended for only two weeks, his suspension was not reported to the National Practitioner Data Bank, and he sued for a mere $10,000 and change. The award reflects a message that the jury intended to send, that peer-review of physicians is a major public interest issue and should be conducted in good faith.

Verner Waite, MD, FACS, founder of the Semmelweis Society International, a non-profit organization dedicated to fighting such practices, personally reviewed more than 1000 cases of physician peer-review, and determined that at least 80% (and probably 90%) of peer-reviews are performed in bad faith, for economic or other reasons. His is the most comprehensive review currently known. It finds that due process in peer-review is the exception, rather than the rule. It is rare to find any hospital that uniformly applies standards of peer-review to the

members of its hospital staff. As a result, scores of physicians have lost their careers without any due process. Bad-faith peer-review against one physician can silence hundreds of physicians and place patients' lives at extreme risk. It is estimated that a majority of physicians exposed to bad-faith peer-review never work again as physicians and that a substantial number commit suicide. Peer-review is part of a system intended to protect patients; if this has been warped, patients are at risk. Bad-faith peer-review is as great a challenge to the practice of ethical medicine as the malpractice crisis; this is why Petitioner and various public interest groups have been able to convince Congress to ask the Government Accountability Office to conduct an investigation into this practice.

State courts should not be allowed to protect hospitals that conduct peer-review in bad faith and should not cover up for criminal activity. Peer-review of physicians is a congressionally regulated process, the importance of which was recognized by this Court in Summit Health v. Pinhas, 500 U.S. 322, 332-333 (1991). Congress still recognizes the importance of the process as evidenced by the reaction of members of the House of Representatives, who met with Petitioner and members of various public interest groups, and were appalled to hear about the widespread abuse of the process across the country in general and the abuse that occurred in this case in particular. Said members have asked those groups to submit draft legislation that would tend to prevent further such abuse by hospitals, and petitioner is now heading a legislative committee that is working on such legislation. In addition, said members are in the process of introducing Petitioner to the House Judiciary Committee for an eventual investigation into the conduct of the various individuals involved, as this case epitomizes the extent to which hospitals are willing to go, by corrupting the courts, to retaliate against physicians. Petitioner has also initiated contacts with the Federal Bureau of Investigation and the Criminal Division of the

Department of Justice, Public Integrity Section, as the judges' and Respondents' and their counsel's acts constitute violation of 18 USC §§ 241 and 242. By granting certiorari, this Court would be contributing to ending the practice of bad-faith peer-review.

**5. There Is A Profound National Interest In Ensuring That State Courts Do Not Pick And Choose When To Stand At Equal Distance From Parties To Litigation**

The Arlington County Circuit Court has a reputation in the community that "it takes care of its own." Such a reputation surely did not derive from a single instance of favoritism but from a persistent pattern of judicial misconduct. It is crucial that conspiracies such as this one not be successful for they provide *carte blanche* for further such misconduct, especially when the State's highest court closes an eye and the state's judicial disciplinary body declines to do its job. Denying this Petition would encourage the Arlington Court to continue to act in bad faith, the Supreme Court of Virginia to do the same, courts of other states to act similarly, the Hospital to repeat its misdeeds, other hospitals to follow suit, and lawfirms that represent hospitals across the country to learn from the experience of their fellow lawyers involved in this case. Indeed, a small number of lawfirms represent a large number of hospitals around the country. These lawfirms regularly conduct seminars that teach hospital administrators how to terminate physicians. In the wake of Poliner, *supra*, these lawfirms are now advising extra care in handling the peer-review process. A denial of this petition would surely be communicated by those lawfirms to their clients.

**6. A State Court Has Decided An Important Question Of Federal Law That Has Not Been, But Should Be, Settled By This Court.**

The Supreme Court of Virginia was informed of the conspiracy alleged by Petitioner and was asked to reverse the Arlington Court's judgment. In other words, the

Virginia Supreme Court was asked whether due process and the equal protection of the laws, as protected by the Fourteenth Amendment and 42 USC § 1983, should have been provided to Petitioner by a Virginia Court that has a reputation of "taking care of its own." The Virginia Supreme Court, by closing an eye on the conduct complained of, answered in the negative. This question is, pursuant to Rule 10(c) of the Rules of this court, precisely the type of question that the Nation justifiably expects this Court authoritatively to decide. Quite simply, this is the sort of case that this Court should unquestionably hear.

**7. Allowing A State To Deprive A Person Of Property Without Due Process Through Judicial Misconduct Will Cause Serious Doubt About The Ability Of The Federal Judicial System To Protect The Citizens Of The United States From State Court Persecution**

As this Court stated in Pulliam, *supra*:

> Congress enacted § 1983 and its predecessor, § 2 of the Civil Rights Act of 1866, 14 Stat. 27, to provide an independent avenue for protection of federal constitutional rights. The remedy was considered necessary because "state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights." Mitchum v. Foster, 407 U.S. 225, 240 (1972).

Similarly here, a state court is in league with those who are bent on depriving Petitioner of his federally protected rights. The remedy provided by Congress in § 1983 is not available to Petitioner as the Alexandria Court dismissed his Complaint and the Fourth Circuit Court of Appeals affirmed. Even if, however, the Fourth Circuit Court of Appeals had reversed the Alexandria Court's ruling, the judgment itself entered by the Arlington Court cannot be reversed by the Alexandria Court under the Rooker-

Feldman doctrine.

Petitioner has already initiated elaborate contacts with members of the United States House of Representatives and with the Department of Justice, supported by major public interest groups concerned with bad-faith peer-review of physicians, whistle-blowing, fraud, and civil rights. Petitioner also publicly addressed members of Congress on May 15, 2007, as part of the Washington Whistleblower Week, and legislation is being introduced to prevent further abuse of the peer-review process. This case is also being closely monitored by major public interest groups and members of the United States Congress, and will be covered by the media in due time. However, victims of judicial conspiracies should not have to resort to the two other branches of Government or to the media to obtain relief in a country that boasts its independent judicial system. This Court should hear this case to prevent creating mistrust in the federal court system's willingness to prevent state courts' abuses.

**8. Petitioner Is Likely To Prevail On The Merits**

The record below contains overwhelming evidence of judicial misconduct. Just a cursory reading of the transcript of the October 2, 2006 hearing, during which Respondent Hospital was awarded sanctions by the Arlington Court, demonstrates that the latter denied Petitioner due process. For instance, the court allowed Respondents to turn the hearing into an evidentiary one, introducing witnesses that Petitioner was not informed of, and introducing 150 pages of evidence that Petitioner was not given the opportunity to examine. Petitioner's motion for continuance to examine such evidence was denied. In fact, the court itself did not examine the evidence prior to entering the judgment against Petitioner based on the evidence. Further, the court entered a monetary judgment based on a contract that was clearly and materially breached and before reaching the merits of the case. In addition, the court's demeanor during the hearing was clearly vindictive and retaliatory. Thus, it is highly likely

that this Court would reverse the judgment below on certiorari.

## VIII. CONCLUSION

As Supreme Court Justice Kennedy recently stated at a hearing before the Senate Judiciary Committee, when judges are not independent, the rule of power replaces the rule of law. This is exactly what happened in this case. This matter is no longer about Petitioner; it is about right and wrong, about judicial independence, about civil rights, about bad-faith peer-review of physicians, about patient quality of care, and about 100,000 patients dying each year from medical errors which are shoved under the rug because whistleblowers routinely suffer the fate Petitioner did. Remedies against judicial conspiracies should be available through the judiciary. This Honorable Court is being asked to prove that the rule of law, not that of power, assets and connections, is still the prevailing one in this Nation. This Court is being asked whether the Canons of Judicial Conduct of Virginia were written for judges to abide by or just for public consumption, and whether judges should be allowed to cover up for criminal conduct by parties to litigation. This Court is being asked to show that, in this country, one *pro se* individual belonging to a minority has the same weight as numerous conspirators, a hospital, unscrupulous attorneys and millions of dollars in assets in the scale of the blind Federal Justice. This Court is being asked to take the same honorable stances it took in Dennis and Pulliam, *supra*.

WHEREFORE, for the foregoing reasons, Petitioner respectfully requests that this Honorable Court grant his petition for writ of certiorari to the Supreme Court of Virginia.

Respectfully Submitted,

ZIAD AKL, M.D., F.A.C.P.,
4400 E-West Hwy, #T112
Bethesda, MD 20814
*Pro se*

# APPENDIX

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON**

| | |
|---|---|
| ZIAD AKL, M.D., F.A.C.P., | ) |
| | ) |
| Complainant, | ) |
| | ) Chancery |
| v. | ) No. 04-722-A |
| | ) Consolidated |
| VIRGINIA HOSPITAL CENTER ET AL. | ) with |
| | ) |
| Respondents. | ) |
| | ) |
| ZIAD AKL, M.D., F.A.C.P., | ) |
| | ) |
| Plaintiff, | ) |
| | ) Law No. |
| v. | ) 05-413 |
| | ) |
| LAURA PEDERSEN ET AL. | ) |
| | ) |
| Defendants. | ) |
| | ) |
| ZIAD AKL, M.D., F.A.C.P., | ) |
| | ) |
| Plaintiff, | ) |
| | ) Law No. |
| v. | ) 05-261 |
| | ) |
| ROBERT HOLMAN, MD | ) |
| | ) |
| Defendant. | ) |

**ORDER**

UPON CONSIDERATION of the Defendants'

motion for sanctions and accompanying bill of particulars, Plaintiff's opposition thereto, oral argument and evidence presented to the Court on October 2, 2006, and the entire record in this case, it is this 2nd day of October 2006, by the Circuit Court for the County of Arlington,

ORDERED, that pursuant to the contract entered into between Plaintiff and Defendant Virginia Hospital Center-Arlington (the "Hospital"), Defendants' motion for costs and reasonable attorney's fees is GRANTED;
And it is further

ORDERED, that Plaintiff be required to pay the Hospital the costs and reasonable attorney's fees that the Hospital incurred in the defense of actions relating to his clinical privileges, in the amount of $616,114.41 /s/ BK

/s/ Benjamin Kendrick

The Honorable Benjamin N. A. Kendrick

WE ASK FOR THIS:

/s/ Karen-Faye Mc Tavish

Deborah B. Baum
Karen-Faye Mc Tavish (Va. Bar No. 47228)
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Sreet, N.W.
Washington, D.C. 20037-1128
(202) 663-8000
Attorneys for Defendant

SEEN AND OBJECTED TO:

/s/ Ziad Akl

Ziad Akl, M.D., F.A.C.P.
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(703) 981-3492
*Pro se* Plaintiff

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Bethesda, MD 20814

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON**

| | |
|---|---|
| ZIAD AKL, M.D., F.A.C.P., | ) |
| | ) |
| Complainant, | ) |
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| v. | ) No. 04-722-A |
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| VIRGINIA HOSPITAL CENTER ET AL. | ) with |
| | ) |
| Respondents. | ) |
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| ZIAD AKL, M.D., F.A.C.P., | ) |
| | ) |
| Plaintiff, | ) |
| | ) Law No. |
| v. | ) 05-413 |
| | ) |
| LAURA PEDERSEN ET AL. | ) |
| | ) |
| Defendants. | ) |
| | ) |
| ZIAD AKL, M.D., F.A.C.P., | ) |
| | ) |
| Plaintiff, | ) |
| | ) Law No. |
| v. | ) 05-261 |
| | ) |
| ROBERT HOLMAN, MD | ) |
| | ) |
| Defendant. | ) |

**JUDGMENT ORDER**

UPON CONSIDERATION of Virginia Hospital

Center-Arlington Health System's (the "Hospital") motion to correct clerical mistakes in this Court's October 2, 2006 Order in this case regarding Defendants' motion for sanctions and accompanying bill of particulars, Plaintiff's opposition thereto, oral argument and evidence presented to the Court on October 2, 2006, and the entire record in this case, it is this 18th day of May, 2007, by the Circuit Court for the County of Arlington,

ORDERED, that the Hospital's motion to correct clerical mistakes is granted;

ORDERED that, as noted in this Court's October 2, 2006 Order, pursuant to the contract entered into between Plaintiff, Ziad Akl, M.D., F.A.C.P., and Defendant Virginia Hospital Center-Arlington Health System, the motion for costs and reasonable attorneys' fees is GRANTED; and it is further

ORDERED, that on October 2, 2006, this Court awarded the Virginia Hospital Center-Arlington Health System a money judgment in the amount of $616,114.41 against Plaintiff, Ziad Akl, M.D., F.A.C.P. Dr. Ziad Akl's address of record is 4400 East-West Highway, #T112, Bethesda, MD 20814. The judgment bears interest from the date of the original judgment, October 2, 2006.

s/ Benjamin Kendrick

The Honorable Benjamin N. A. Kendrick

WE ASK FOR THIS:

s/ Karen-Faye Mc Tavish

Deborah B. Baum

Karen-Faye Mc Tavish (Va. Bar No. 47228)
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Attorneys for Defendant

SEEN AND OBJECTED TO:

_____

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Ziad Akl, M.D., F.A.C.P.
4400 East-West Highway
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**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON**

| | |
|---|---|
| ZIAD AKL, M.D., F.A.C.P., | ) |
| | ) |
| Complainant, | ) |
| | ) Chancery |
| v. | ) No. 04-722-A |
| | ) Consolidated |
| VIRGINIA HOSPITAL CENTER ET AL. | ) with |
| | ) |
| Respondents. | ) |
| | ) |
| ZIAD AKL, M.D., F.A.C.P., | ) |
| | ) |
| Plaintiff, | ) |
| | ) Law No. |
| v. | ) 05-413 |
| | ) |
| LAURA PEDERSEN ET AL. | ) |
| | ) |
| Defendants. | ) |
| | ) |
| ZIAD AKL, M.D., F.A.C.P., | ) |
| | ) |
| Plaintiff, | ) |
| | ) Law No. |
| v. | ) 05-261 |
| | ) |
| ROBERT HOLMAN, MD | ) |
| | ) |
| Defendant. | ) |

**ORDER**

UPON CONSIDERATION of the Plaintiff's request

for a nonsuit of all claims in these consolidated actions, Defendants' opposition thereto, Defendants' motion for reconsideration, Plaintiff's opposition thereto, and oral argument heard September 1, 2006, and the entire record in this case, it is this 2nd day of October, 2006, by the Circuit Court for the County of Arlington,

ORDERED, that Defendants' motion for reconsideration is GRANTED;
and it is further
ORDERED, that Plaintiff's request for nonsuit be granted only with respect to his breach of contract and defamation claims, which are the only claims that this Court has not previously dismissed with prejudice in these consolidated matters.

/s/ Benjamin Kendrick

The Honorable Benjamin N. A. Kendrick

WE ASK FOR THIS:

/s/ Karen-Faye Mc Tavish

Deborah B. Baum
Karen-Faye Mc Tavish (Va. Bar No. 47228)
PILLSBURY WINTHROP SHAW PITTMAN LLP
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Attorneys for Defendant

SEEN AND OBJECTED TO:

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*Pro se* Plaintiff

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Circuit Court of Arlington County
1425 North Court House Road
Arlington, VA 22201

| | |
|---|---|
| William T. Newman, Jr. | Judges Retired |
| Chief Judge | Paul F. Sheridan |
| Benjamin N. A. Kendrik | William L.Winston |
| Judge | Thomas R. Monroe |
| Joanne Alper | Paul D. Brown |
| Judge | Charles H. Duff |
| James Almand | Charles S. Russell |
| Judge | (Justice Retired) |

February 10, 2006

James R. Hammerschmidt, Esq.
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Ziad Akl, M.D.
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Deborah B. Baum, Esq.
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Re: Akl vs. Va. Hospital Center, et al
Law No. 04-722-A
Law No. 05-413

Dear Counsel and Dr. Akl,

At the hearing on various motions on February 3, 2006, the Court requested the filing *in camera* of the Hospital's documents regarding the review process used

by the hospital in Dr. Akl's case. Those documents were previously held to be privileged but court review was appropriate in view of Plaintiff's claims that the review panel was "fictitious" or otherwise biased by virtue of conflicts of interest.

The documents forward are extensive and authentic. They directly refute Plaintiff's claim about fictitious or biased committees. They reveal compliance witht eh hospital's by-laws and Medical Staff Credentials Policy.

A substantial investigation was made into the allegations against dr. Akl. Many meetings, hearings, and conferences were held attended by Plaintiff and, in many instances, his attorney. Extensive correspondence was exchanged.

The review panel was furnished with a full record of the investigation, including materials submitted by Dr. Akl. They requested and received materials, including some submitted by the Plaintiff.

While the names of the Review Panel members have been withheld pursuant to the statute, it is clear there were no conflicts-of-interest as alleged by Plaintiff.

Hence, the documents previously ruled as privileged will continue to be privileged and the identity of the of the review panel will, likewise, rmain privileged. The documenst furnished will remain under seal; but will be part of the record for appellate purposes.

Ms. Baum and Ms. McTavish should prepare an appropriate order noting Plaintiff's objections.

Very Truly Yours,

s/ Alfred Swersky

Alfred Swersky
Judge Designate

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building of Richmond on Wednesday the 11th day of April, 2007.

Ziad Akl, M.D., F.A.C.P. Appellant,

against Record No. 062627
Circuit Court No. CH04-722A
(consolidated with CL05-413 and CL05-261)

Virginia Hospital Center Arlington Health System, et al., Appellees.

From the Circuit Court of Arlington County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/ E. Edwards

Deputy Clerk

I, the undersigned, Nabil Emad, DDS, affirm the following:

On May 8, 2007, I examined the record of a lawsuit captioned Akl v. Virginia Hospital Center et al., Chancery No. 04-722-A, at the Arlington County Circuit Court clerk's office.

Among the documents is a large white sealed envelope.

- On the front side of the envelope there is a printed label in the center with the name Karen-Faye McTavish as the sender.
- The label reads: privileged documents for in camera review by the Honorable Judge Swersky.
- The label has the seal of the clerk of the Supreme Court of Virginia that reads "Received, Jan 4, 2007," with the number 062627 next to it.
- The front of the envelope also has the following handwritten notes in blue ink "CH04-722-A" and "sealed".
- The back of the envelope is intact and smooth at the junction of the flip-top and the body showing that the envelope was never opened after it was originally sealed by the sender.
- No other markings are present on the back or front of the envelope.
- There is no evidence that the envelope was ever opened on any side after it was first sealed by the sender.

Among the documents is also a large yellow cushioned envelope containing a voluminous document.

- On the front side of the envelope there is a label with the name of Deborah B. Baum as the sender with her address.
- The label is addressed to the Honorable Alfred Swersky and reads: "FOR IN CAMERA REVIEW."

- Also on the front of the envelope is written "Akl v. Va Hosp Ctr et al, Law No. 05-413, Law No. 04 722 A, under seal."
- The back of the envelope has the seal of the clerk of the Supreme Court of Virginia that reads "Received, Jan 4, 2007," with the number 062627 next to it.
- The back also has the handwritten note "under seal," followed by an illegible signature followed by "Judge Designate 02/10/2006"
- The envelope appears to have been opened by the flip-top and resealed by stapling and taping the flip-top.
- Overlapping the body of the envelope and the flip-top the terms "under seal" appear three times as well as the sentence "to remain under seal, ADS, 2/10/06"
- Also appear several lines overlapping the body and the flip-top of the envelope.
- The writings mentioned in the previous two items are made on top of the scotch tape.
- The writings appear to have been undisturbed after they were made because of the exact matching of the parts that are on the body of the envelope with those on the flip-top as evidenced by the attached photocopy. This shows that the envelope was never opened after the writings were made on it.

/s/ Nabil Emad

---

Nabil Emad, DDS
9704 Avenel Farm Drive
Potomac, MD 20854

County/City of Fairfax
Commonwealth/State of Va.
The foregoing instrument was acknowledged before me this 23 day of May, 2007

by Nabil Emad

_____

(name of person seeking acknowledgement)

/s/ Roxana Fernandez

_____

Notary Public
My Commission Expires: 03/31/08

Roxana Fernandez
Notary Public
Commonwealth of Virginia